

WATER RIGHT FORFEITURE PROTECTION

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill protects specific entities from forfeiture of water rights for nonuse.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the nonuse period of a water right from five to seven years;
- ▶ clarifies the forfeiture procedure;
- ▶ allows a person that owns stock in a water company to file a nonuse application;
- ▶ protects a water right from forfeiture if:
 - a public water supplier holds the water for the reasonable future water requirement of the public;
 - the land where the water is used is under a fallowing program;
 - the water is stored in an aquifer; and
 - another water source is available for the beneficial use;
- ▶ establishes how the reasonable future water requirement of the public are determined; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-4, as last amended by Laws of Utah 2007, Chapters 136 and 329

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **73-1-4** is amended to read:

73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Extension of time.

~~[(1) (a) In order to further the state policy of securing the maximum use and benefit of its scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use.]~~

~~[(b) The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts.]~~

~~[(c) The provisions of Subsections (2) through (6) shall be construed to carry out the purposes and policies set forth in this Subsection (1).]~~

~~[(2)]~~ (1) As used in this section[, "public water supply entity"]:

(a) "Public entity" means:

(i) the United States;

(ii) an agency of the United States;

(iii) the state;

(iv) a state agency;

(v) a political subdivision of the state; or

(vi) an agency of a political subdivision of the state.

(b) "Public water supplier" means an entity that:

(i) supplies water [as a utility service or for irrigation purposes and is also:], directly or indirectly, to the public for municipal, domestic, or industrial use; and

(ii) is:

~~[(a)]~~ (A) a [municipality, water conservancy district, metropolitan water district, irrigation district, or other public agency] public entity;

~~[(b)]~~ (B) a water [company regulated] corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission; [or]

~~[(c) any other owner of a community]~~ (C) a public water system[:], as defined in Section 19-4-102; or

(D) a water users association:

(I) in which one or more public entities own at least 70% of the outstanding shares; and

(II) that is a local sponsor of a water project constructed by the United States Bureau of

64 Reclamation.

65 (c) "Water company" is as defined in Section 73-3-3.5.

66 ~~[(3)]~~ (2) (a) When an appropriator or the appropriator's successor in interest abandons
67 or ceases to use all or a portion of a water right for a period of ~~[five]~~ seven years, the water
68 right or the unused portion of that water right ~~[ceases and the water reverts to the public]~~ is
69 subject to forfeiture in accordance with Subsection (2)(c), unless, before the expiration of the
70 ~~[five]~~ seven-year period, the appropriator or the appropriator's successor in interest files a
71 verified nonuse application with the state engineer.

72 (b) (i) A nonuse application may be filed on all or a portion of the water right,
73 including water rights held by ~~[mutual irrigation companies]~~ a water company.

74 (ii) ~~[Public water supply entities]~~ A person that ~~[own]~~ owns stock in a ~~[mutual]~~ water
75 company, after giving written notice to the water company, may file a nonuse ~~[applications]~~
76 application with the state engineer on the water represented by the stock.

77 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial
78 action to declare the right forfeited is commenced within 15 years from the end of the latest
79 period of nonuse of at least ~~[five]~~ seven years.

80 (ii) If forfeiture is asserted in an action for general determination of rights in
81 conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year
82 limitation period shall commence to run back in time from the date the state engineer's
83 proposed determination of rights is served upon each claimant.

84 (iii) A decree entered in an action for general determination of rights under Chapter 4,
85 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any
86 right determined to be valid in the decree, but ~~[shall]~~ does not bar a claim for periods of nonuse
87 that occur after the entry of the decree.

88 (iv) A proposed determination by the state engineer in an action for general
89 determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of
90 forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has
91 been filed within the time allowed in Chapter 4, Determination of Water Rights.

92 ~~[(d) The extension of time to resume the use of that water may not exceed five years~~
93 ~~unless the time is further extended by the state engineer.]~~

94 ~~[(e) The provisions of this section are applicable]~~

(d) This section applies whether the unused or abandoned water or a portion of the water is;

(i) permitted to run to waste; or ~~[is]~~

(ii) used by others without right with the knowledge of the water right holder; provided that the use of water pursuant to a lease or other agreement with the appropriator or the appropriator's successor shall be considered to constitute beneficial use].

~~[(f)]~~ (e) ~~[The provisions of this]~~ This section ~~[shall]~~ does not apply to:

(i) the use of water according to a lease or other agreement with the appropriator or the appropriator's successor in interest;

(ii) a water right if its place of use is contracted under an approved state agreement or federal conservation following program;

~~[(i) to]~~ (iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right~~[, or when groundwater is not available because of a sustained drought];~~

~~[(ii) to]~~ (iv) water stored, according to a water right, in [reservoirs pursuant to an existing water right] a surface reservoir or an aquifer, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, where the stored water is being held in storage for present or future use; [or]

~~[(iii) when]~~ (v) a water right if a water user has beneficially used substantially all of [a] the water right within a [five] seven-year period, provided that this exemption [shall] does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights[-];

(vi) a water right:

(A) (I) owned by a public water supplier;

(II) represented by a public water supplier's ownership interest in a water company; or

(III) to which a public water supplier owns the right of use; and

(B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (f); or

~~[(g)]~~ (vii) ~~[Groundwater rights used to supplement the quantity or quality of other water supplies may not be subject to loss or reduction under this section if not used]~~ a surface water right or a groundwater right during [periods] a period of time when [the other water

~~source delivers sufficient water]~~ another water right available to the appropriator or the appropriator's successor in interest provides sufficient water so as to not require use of the supplemental surface water right or groundwater right.

(f) The reasonable future water requirement of the public is the amount of water needed in the next 30 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demand.

~~[(4)]~~ (3) (a) The state engineer shall furnish ~~[an]~~ a nonuse application form requiring the following information:

(i) the name and address of the applicant;

(ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;

(iii) the date the water was last diverted and placed to beneficial use;

(iv) the quantity of water;

(v) the period of use;

(vi) the extension of time applied for;

(vii) a statement of the reason for the nonuse of the water; and

(viii) any other information that the state engineer requires.

(b) Filing the nonuse application extends the time during which nonuse may continue until the state engineer issues his order on the nonuse application.

(c) (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where the interested party may obtain additional information relating to the application.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is

157 formal.

158 (e) In any proceedings to determine whether the application for extension should be
159 approved or rejected, the state engineer shall follow the procedures and requirements of Title
160 63, Chapter 46b, Administrative Procedures Act.

161 (f) After further investigation, the state engineer may approve or reject the application.

162 ~~[(5)]~~ (4) (a) ~~[Nonuse applications]~~ The state engineer shall grant a nonuse application
163 on all or a portion of a water right [shall be granted by the state engineer for periods] for a
164 period of time not exceeding [five] seven years [each, upon a showing of] if the applicant
165 shows a reasonable cause for nonuse.

166 (b) ~~[Reasonable causes]~~ A reasonable cause for nonuse ~~[include]~~ includes:

167 (i) a demonstrable financial hardship or economic depression;

168 (ii) the initiation of recognized water conservation or efficiency practices, or the
169 operation of a groundwater recharge recovery program approved by the state engineer;

170 (iii) operation of legal proceedings;

171 ~~[(iv) the holding of a water right or stock in a mutual water company without use by~~
172 ~~any public water supply entity to meet the reasonable future requirements of the public;]~~

173 ~~[(v)]~~ (iv) situations where, in the opinion of the state engineer, the nonuse would assist
174 in implementing an existing, approved water management plan; or

175 ~~[(vi) situations where all or part of the land on which water is used is contracted under~~
176 ~~an approved state agreement or federal conservation fallowing program;]~~

177 ~~[(vii)]~~ (v) the loss of capacity caused by deterioration of the water supply or delivery
178 equipment if the applicant submits, with the application, a specific plan to resume full use of
179 the water right by replacing, restoring, or improving the equipment~~[-or]~~.

180 ~~[(viii) any other reasonable cause.]~~

181 ~~[(6)]~~ (5) (a) Sixty days before the expiration of ~~[any extension of time]~~ a nonuse
182 application, the state engineer shall notify the applicant by mail or by any form of electronic
183 communication through which receipt is verifiable, of the date when the ~~[extension period]~~
184 nonuse application will expire.

185 (b) Before the ~~[date of]~~ expiration of the nonuse application, the applicant shall either:

186 (i) file a verified statement with the state engineer setting forth the date on which use of
187 the water was resumed, and whatever additional information is required by the state engineer;

188 or

189 (ii) apply for ~~[a further extension of time in which to resume use of the water]~~ another
190 nonuse application according to the procedures and requirements of this section.

191 (c) Upon receipt of the applicant's properly completed, verified statement, the state
192 engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if
193 so, shall issue a certificate of resumption of use of the water as evidenced by the resumed
194 beneficial use.

195 ~~[(7)]~~ (6) The appropriator's water right or a portion of the water right ~~[ceases and the~~
196 ~~water reverts to the public]~~ is subject to forfeiture in accordance with Subsection (2)(c) if the:

197 (a) appropriator or the appropriator's successor in interest fails to apply for an
198 extension of time;

199 (b) state engineer denies the nonuse application; or

200 (c) appropriator or the appropriator's successor in interest fails to apply for a further
201 extension of time.

Legislative Review Note
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Office of Legislative Research and General Counsel